

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

GREGORY LINSTON GILLILAN,

Plaintiff

v.

D. SCARBOROUGH,

Defendant

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1:05-CV-172 (WLS)

ORDER

Before the Court is a Recommendation from United States Magistrate Judge Richard L. Hodge filed on June 14, 2006. (Doc. 13; *see also* Doc. 16). It is recommended that the Plaintiff's Motion for Default Judgment (Doc. 6) be denied as premature and without merit. (Doc. 13). Plaintiff filed a timely objection on June 26, 2006. (Doc. 15).

In his recommendation, the Magistrate Judge found that this action was filed on December 6, 2005, and that service was ordered on Defendant on December 28, 2005. (Doc. 13). It was also found that a summons was issued as to Defendant on May 3, 2006, and that Defendant filed a motion to dismiss on May 9, 2006. *Id.* It was further found that Plaintiff filed the instant motion for default judgment on February 17, 2005 prior to the actual service of the summons and complaint on Defendant. (Docs. 13). It was therefore found that Plaintiff's motion was premature and without merit. (Doc. 13).

Plaintiff objects to the instant recommendation, asserting that the Magistrate Judge erred in stating that the instant motion was filed on February 17, 2005, that said motion was indeed filed on February 17, 2006, and that this error resulted in the allegedly false conclusion that Plaintiff's motion is timely. (Doc. 15). In his June 27, 2006 order, the Magistrate Judge noted that the date in question is indeed February 17, 2006, but that such a correction does not substantively alter the recommendation as both dates predate service of the complaint on Defendant. (Doc. 16). The Court agrees.

Upon full review and consideration upon the record, the Court finds that said Recommendation (Doc. 13), as amended by the Magistrate Judge's June 27, 2006 order (Doc. 16) should be, and hereby is, **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein, together with the findings made and

conclusions reached herein. Accordingly, Plaintiff's Motion for Default Judgment (Doc. 6) is **DENIED**.

SO ORDERED, this 12th day of July, 2006.

/s/W. Louis Sands
W. LOUIS SANDS, CHIEF JUDGE
UNITED STATES DISTRICT COURT